

REMARKS

Claims 1-6 remain pending in this application for which applicant seeks reconsideration.

Amendment

Claims 1-6 have been amended. Allowed claims 3 and 4 have been edited to further improve their form. Specifically, the terms "third" and "fourth" have been changed to --first-- and --second-- for natural flow of readability. The scope of claims 3 and 4 has not been altered in any manner. Remaining claims 1, 2, 5, and 6 further have been amended to improve their clarity, and to remove the § 112 informality contained in claim 5 identified by the examiner. In this respect, the "performance data" has been clarified as an --automatic performance data--. No new matter has been introduced.

Allowed Claims

Claims 3 and 4 have been allowed. Applicant submits that these claims remain in condition for allowance since the revisions made to these claims are merely editorial in nature, and not ones that change the claim scope.

Art Rejection

Claims 1, 2, 5, and 6 were rejected under 35 U.S.C. § 103(a) as unpatentable over Imaizumi (USP 5,241,128) (different from Imaizumi from the previous art rejection) in view of Nakata (USP 5,831,195). Applicant submits that independent claims 1 and 6 as presently amended clearly define over the applied references for the following reasons.

Independent claims 1 and 6 now call for detecting a specific note in the automatic performance data supplied from the storage device and switching reproduction of a section of the accompaniment pattern data to another section of the accompaniment pattern data when a reproduction point of the automatic performance data reaches a point corresponding to the detected specific note.

Imaizumi discloses changing the automatic accompaniment pattern based on the keyboard performance state, namely the played keyboard notes. Specifically, "the pattern change selecting switch 25 is provided for selecting whether or not an accompaniment pattern is to be automatically changed in accordance with a keyboard performance state (key touch or depressed key number)." See column 9, lines 5-11. Specifically, when the pattern change selecting switch 25 is turned on, automatic accompaniment to be reproduced changes in

accordance with a manual keyboard performance. In this respect, the examiner states that Imaizumi discloses detecting a specific manual performance note(s) to change the automatic accompaniment pattern. Moreover, although not explicitly explained, it appears that the examiner appears to be relying on Nakata for the proposition that detecting notes from the stored performance data rather than the notes from a live performance would have been obvious. Applicant traverses the art rejection for the following reasons.

Nakata indeed disclose storing both the automatic performance data and automatic accompaniment data in a storage. But Nakata also does not disclose or teach anywhere of the claimed feature of detecting a specific note from an automatic performance data and switching reproduction of a section of the accompaniment pattern data to another section of the accompaniment pattern data based on the detected specific note. Imaizumi also fails to disclose the above claimed feature since it specifically relies on the manually played keyboard notes rather than from the stored automatic accompaniment data.

The examiner also seems to be arguing that, as each pitch (note) in the MIDI protocol, whether manually played or stored as data, is assigned a unique number, the specific note can be applied to both the automatic performance data and the manually performance. This still does not teach or suggest the claimed feature outlined above. In determining obviousness based on the Graham factors, the examiner has to provide a teaching for doing what the inventor here has done. Teaching evidence, which needs to be viable and objective, need not be supplied directly by the relied upon reference(s), but nonetheless must be provided to establish a prima facie case of obviousness. Here, the examiner provides no teaching of detecting a specific note from a stored automatic performance data.

As the examiner has failed to provide any objective evidence of the teaching of the claimed feature, applicant submits that the examiner has failed to establish a prima facie case of obviousness. Accordingly, the combination, even if it were deemed properly combinable for argument's sake, would not have taught the claimed invention.

Conclusion

Applicant submits that claims 1-6 patentably distinguish over the applied references and are in condition for allowance. Should the examiner have any issues concerning this reply or any other outstanding issues remaining in this application, applicant urges the examiner to contact the undersigned to expedite prosecution.

Respectfully submitted,

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REG. NO. 34,079 (RULE 34, WHERE APPLICABLE)

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